

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HEIDI A. CHARLES, individually and
as an Administrator of the Estate of J.G.,
deceased, and A.G., a minor, by and
through HEIDI A. CHARLES, as a parent
and natural guardian of a minor,

Civil Action No.: _____

Plaintiffs,

v.

WHEELING & LAKE ERIE RAILWAY
COMPANY,

JURY TRIAL DEMANDED

Defendant.

NOTICE OF REMOVAL

AND NOW, comes Defendant, Wheeling & Lake Erie Railway Company, by and through its counsel, Dickie, McCamey & Chilcote, P.C., and removes the above-captioned lawsuit pursuant to 28 U.S.C. § 1441 *et seq.* from the Court of Common Pleas of Allegheny County, Pennsylvania to the United States District Court for the Western District of Pennsylvania, stating as follows:

1. Plaintiffs Heidi A. Charles, individually and as an Administrator of the Estate of J.G., deceased, and A.G., a minor, by and through Heidi A. Charles, as a parent and natural guardian of a minor, initiated this civil action against Defendant Wheeling & Lake Erie Railway Company on June 10, 2022 by filing a Praecipe for Writ of Summons in the Court of Common Pleas of Allegheny County, Pennsylvania at G. D. No. 22-007056.

2. Thereafter, Defendant Wheeling & Lake Erie Railway Company filed a Praecipe for Rule to File Complaint, and a Rule was issued by the Allegheny County Department of Court Records for Plaintiffs to file a Complaint.

3. On August 5, 2022, Plaintiffs filed a Complaint in the Court of Common Pleas of Allegheny County and served it by electronic mail and U.S. Mail upon counsel for Wheeling & Lake Erie Railway Company on the same date.

4. Attached hereto as Exhibit “A” are true and correct copies of the Complaint and all other process and pleadings that have been filed to date in the Court of Common Pleas of Allegheny County, Pennsylvania at G.D. No. 22-007056.

5. In the Complaint, Plaintiffs allege, *inter alia*, that Defendant was negligent in the happening of a June 24, 2020 accident when Plaintiff’s Decedent, J.G., a minor age 15, allegedly was struck by a Wheeling & Lake Erie Railway Company train as she was walking across the railroad’s trestle in South Fayette Township, Allegheny County, Pennsylvania and fell to the pavement below. (See Complaint, ¶¶ 4, 29). The Complaint alleges that J.G. sustained blunt impact injuries to the head and torso and died as a result of this accident, and that her sister, A.G., also a minor, witnessed J.G. being struck by the train, her fall from the railroad trestle, and her subsequent death. (See Complaint, ¶¶ 51, 53).

6. Plaintiff Heidi A. Charles, individually and as Administrator of the Estate of J.G., deceased, seeks compensatory damages under the Pennsylvania Wrongful Death Act, 42 Pa.C.S.A. § 8301, for the following:

- a. Loss of Decedent’s personal services, society, companionship, support, consortium, comfort, guidance, solace, and protection;
- b. Loss of Decedent’s contributions from the date of her death through the remainder of her life expectancy;
- c. Funeral, burial and administrative expenses; and
- d. Other losses and/or damages permitted by law.

(See Complaint, ¶ 42).

7. Plaintiff Heidi A. Charles, individually and as Administrator of the Estate of J.G., deceased, also seeks compensatory damages under the Pennsylvania Survival Act, 42 Pa.C.S.A. § 8302, for the following:

- a. Decedent's pain and suffering;
- b. Decedent's loss of earning power and/or potential earning capacity;
- c. Loss of future earnings for the period of Decedent's life expectancy; and
- d. Other damages permitted by law.

(See Complaint, ¶ 46).

8. A.G., a minor, by and through Heidi A. Charles, as a parent and natural guardian of a minor, seeks compensatory damages for her physical harm and emotional distress, including fright and mental suffering, from witnessing the alleged accident as described above. (See Complaint, ¶ 56-57).

9. This is an action between parties of diverse citizenship. Specifically,

- a. At the time this action was commenced and continuing to present, Plaintiff Heidi A. Charles, in her own right, was and is a citizen of the Commonwealth of Pennsylvania;
- b. Upon information and belief, J.G. was a citizen of the Commonwealth of Pennsylvania at the time of her death on June 24, 2020;
- c. At the time this action was commenced and continuing to present, A.G., a minor, was and is a citizen of the Commonwealth of Pennsylvania;
- d. Accordingly, in her capacity as the legal representative of the Estate of J.G. and the legal representative of A.G., a minor, Heidi A. Charles is deemed to be a citizen of the Commonwealth of Pennsylvania in accordance with 28 U.S.C. § 1332(c)(2); and
- e. At the time this action was commenced and continuing to present, Wheeling & Lake Erie Railway Company was and is a Delaware corporation having its principal place of business located in Brewster, Ohio.

10. While Plaintiffs' Complaint does not request a specific monetary judgment, Plaintiffs' respective claims each allege various damages that Defendant reasonably believes concern matters in controversy exceeding the sum or value of \$75,000.00, exclusive of interest and costs.

11. The current action pending in the Court of Common Pleas of Allegheny County, Pennsylvania is within the jurisdiction of the United States District Court for the Western District of Pennsylvania.

12. Given the foregoing, this action is one over which the United States District Court for the Western District of Pennsylvania has original jurisdiction pursuant to 28 U.S.C. § 1332 inasmuch as there exists complete diversity of citizenship between Plaintiffs and Defendant, and the amount in controversy for each Plaintiff's claims is believed to exceed the sum or value of \$75,000.00, exclusive of interest and costs.

13. This action is removable from the Court of Common Pleas of Allegheny County, Pennsylvania pursuant to the provisions of 28 U.S.C. § 1441 *et seq.* Defendant has filed the within Notice of Removal within thirty (30) days of its receipt of Plaintiffs' Complaint, which is the initial pleading setting forth Plaintiffs' claims for relief upon which such action is based, and it has been less than one year after commencement of the action. 28 U.S.C. § 1446.

14. Concurrent with the filing of this Notice of Removal, Defendant has filed a Notice of Filing of Notice of Removal with the Court of Common Pleas of Allegheny County, Pennsylvania advising that Defendant has removed this action to the United States District Court for the Western District of Pennsylvania.

15. In filing this Notice of Removal, Defendant does not waive any defense which may be available to it in this action.

WHEREFORE, Defendant, Wheeling & Lake Erie Railway Company, prays that this case be removed from the Court of Common Pleas of Allegheny County, Pennsylvania to the United States District Court for the Western District of Pennsylvania.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

Date: August 30, 2022

By: /s/Scott D. Clements
Scott D. Clements, Esquire

Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402
(412) 281-7272

Counsel for Defendant,
Wheeling & Lake Erie Railway Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Notice of Removal** has been filed with the Clerk using the Court's CM/ECF System this 30th day of August, 2022, and also has been served the same date by first-class U.S. Mail and electronic mail, to the following counsel of record:

Mark F. McKenna, Esquire
McKenna & Associates, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/Scott D. Clements
Scott D. Clements, Esquire

Counsel for Defendant,
Wheeling & Lake Erie Railway Company